

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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| Appl. No. | : | 10/823,829 | Confirmation No. 5642 |
| Applicant | : | Evans et al. | |
| Filed | : | April 14, 2004 | |
| Art Unit | : | 3714 | |
| Examiner | : | Aileen Chyn | |
| | | | |
| Docket No. | : | CHORUS-P007-01 | |
| Customer No. | : | 27268 | |

DECLARATION OF ALAN L. COLQUITT

I, Alan L. Colquitt, Ph.D. of 7805 Timber Run Lane, Indianapolis, IN 46256 declare as follows:

1. I have over 20 years of experience implementing testing programs as an internal consultant in The Procter & Gamble Company (1985-1990) and Eli Lilly and Company (1990-present). I have a Ph.D. in Industrial and Organizational Psychology from Wayne State University in Detroit, MI. I have specialized training in the areas of test development, test validation, and psychometrics. I have considerable experience developing tests and testing programs for a variety of purposes including: Pre-employment screening; employee and leadership development; identification, selection and development of leaders and high potential employees; promotion; and reallocation. See attached resume for additional background (Exhibit A).

2. I have studied the disclosure of the above-identified patent application ("Evans") and the disclosures of U.S. Patent Publication No. 2002/0045154Q1 to Wood (The "Wood" application) and U.S. Patent Nos 7,148,969 and 6,341,267 to Bonstetter and Taub (the "Bonstetter Patent" and "Taub Patent" respectively).

3. I have studied the Office Action issued by the patent examiner on October 3, 2007 in application serial number 10/823,829; and have the following comments on the assertions in the Office Action organized by paragraph number from the Office Action:

4. Section 14. With reference to Figure 5 (elements 1330-1333) and page 4, section [0076], when Wood describes "personality tests", he includes what one of ordinary skill in the art would not refer to as personality tests. Personality tests are not the same as ability tests, interest inventories, and other tests (see Guion, 1998, pp. 485-486, pp.591-592 for an overview

of types of tests and inventories and their differences, Exhibit B). Under Wood, the choice of tests and the number of tests is dependent on the goals of the user. A plurality of tests is not used if the user selects a service requiring no tests or one test. A plurality of tests CAN be used but it is not required. Moreover, in Wood, tests are not used to measure competencies, nor are they linked to competencies or used as evidence about the relative presence or absence of a competency. Under Wood, tests and test results stand by themselves. Users are “classified” (this means “scored” to those of ordinary skill in the art) based on the tests and other tools and then are linked directly to services or products. Evans requires multiple tests. To reliably and validly measure attributes and to link attributes to competencies, one of ordinary skill in the art would require a plurality of tests. Wood does not require a plurality of tests.

5. Section 15. With reference to Figure 3 and page 5, section [0143], Wood asks questions of the user that are not part of tests. Tests are typically comprised of many questions or items. However, one of ordinary skill in the art would not refer to questions as tests. The fact that a user is asked questions about finance, does not mean he/she is taking a finance test. Developing a test requires a systematic process of defining a construct, developing and testing stimulus material to measure the construct, evaluating the stimulus material for its ability to measure the construct, and establishing the reliability and validity of the test as a measure of this construct. For more information on this process, see “principles of test development” in Guion, 1998, pp. 490-497. Woods process does not require “tests” in the way one of ordinary skill in the art would describe them. Tests may not be used at all under Wood, as would be the case when the user is simply asked questions about Finance. Wood also includes tests and tools that are not professionally developed and validated. Finally, Wood allows users to change the way the tests are scored and weighted (see [0194], [0195], [0196]). Under Evans, the scoring of tests is standardized based on the expert judgment and research of the test publishers. One of ordinary skill in the art would not allow changes to the scoring (or “classification” as used by Wood) methodology. This invalidates the tests.

6. Section 16. With respect to page 6, section [0165], USED IN CONJUNCTION is not the same as CROSS REFERENCED. Under Wood, “USED IN CONJUNCTION” means multiple tests are used “together” or “cumulatively” to classify someone. Under Evans, “CROSS REFERENCED” means that the multiple tests are used to score attributes, and the scored attributes are used as input in the scoring of a competency. Thus with Evans, each test provides one or more scored attributes, and the attributes associated with particular competencies are cross-referenced to provide an evaluation of the competency. With Evans, multiple competencies are evaluated based on the cross-referenced attributes. Wood cannot “CROSS

REFERENCE" since it doesn't use attributes or competencies (see Item 4 above). With respect to page 6, section [0168], under Wood, more testing CAN be required, but it is not mandated. How much testing is conducted is dependent upon the service or product or the wishes of the user (See Item 4). Under Evans, the Hallmarks process mandates a plurality of tests. This is not required under Wood. Again, one of ordinary skill in the art would require a plurality of tests to adequately measure the competencies outlined in Evans. While Wood allows for multiple media or ways to measure things (e.g. a simulation or a test) (page 6, paragraph [0167]) and while these may be used "in conjunction", they are not "cross referenced" since the test results stand by themselves and are not linked to attributes or competencies as they are in Evans.

7. Section 17. The examiner is correct in stating that Wood does not disclose the specific tests. Wood cannot do so without reference to a particular user's request, goals, product or service. Moreover, as discussed in Items 4 and 6 above, Wood does not use attributes or competencies in his system. Test results are not used as evidence about the relative presence or absence of attributes and competencies. Test results stand by themselves.

8. Section 18. With respect to Bonstetter, the examiner equates behavioral interview questions or items in a job analysis questionnaire with tests. One of ordinary skill in the art would draw a substantial distinction between the purpose of the system and tools described in Bonstetter and those described in Evans. Bonstetter is measuring or profiling JOBS. The questionnaire he describes and uses is a job analysis questionnaire. Evans is measuring PEOPLE and uses psychometric tests. See Guion, 1998 pp. 57-59 (Exhibit B) and Wikipedia (Exhibit C) for an overview of job analysis. Moreover, one of ordinary skill in the art would not equate written behavioral interview questions described in Bonstetter to test items, nor would one of ordinary skill use an interview or a job analysis questionnaire as a test (see Guion 1998, Chapter 11, pp. 485-540 and Chapter 13 pp.606-624 for the distinction between "assessment by tests" and "assessment by interviews"). Bonnstetter uses questions to measure jobs, in an attempt to understand the extent to which competencies are essential to a job. Evans uses tests to provide evidence about the relative strength or weakness of attributes and competencies in people. Under Evans, test questions are linked to test scales for scoring. Test scales or dimensions are then linked to attributes, which are in turn linked to competencies. Questions discussed in Bonstetter are linked directly to competencies. However, one of ordinary skill in the art would see that what Bonnstetter and Evans do accomplishes completely different purposes. Competency ratings under Bonstetter indicate whether or not a competency is essential to a job or position. These ratings are averaged across a number of persons asked the same questions or who complete the same job analysis questionnaire. Under Evans, competency ratings indicate

the relative strength or weakness of the person and are averages of attribute scores, which are in turn defined by test results.

9. Section 19. Examiner says it would have been obvious to one of ordinary skill to have applied the plural tests for plural leadership competencies of Bonstetter to the employment competency testing system of Wood. One of ordinary skill in the art would not see this as obvious. This has been partially addressed in Item 8 above. Bonstetter does not use tests, and uses competencies in a fundamentally different way than Evans. Moreover, the examiners comments presume that Wood has a “competency testing system”. In my opinion, one of ordinary skill would not refer to Wood’s system as a “competency testing system”. It is a job analysis system. In section [0153], Wood describes gathering data from users on what their job related interests are. The examples listed in Wood are “interest questions”. One of ordinary skill in the art would not refer to “interest questions” or interest areas as “competencies”. Competencies are “a combination of motives, traits, self-concepts, attitudes or values, content knowledge or cognitive behavior skills...that can be reliably measured or counted that can be shown to differentiate superior from average performers” (Spencer, McClelland, & Spencer, 1994, as reported in Ash et al, 2000, p. 706 (Exhibit D). The emphasis is on “combination” (competency is not a unitary concept) and “performance” (competencies are grounded in Performance). Tests or interest questions in this case are used as “signs” or “signals” of future performance or “competence”. They are predictors that someone will be able to perform in the future. This is a key distinction to those of ordinary skill in the art. This distinction is described in Wernimont and Campbell (1968), p.197-203 (Exhibit E). Moreover, the fact that someone is interested in “working with others” is not the same as being skilled or competent in the area of “teamwork” or “interpersonal skills”. One of ordinary skill in this art would consider this distinction to be an important one. Moreover, while Wood uses tests, his system does not measure competencies, nor does he link tests and test results to anything like attributes or competencies. The examiner is correct in stating that Wood allows for multiple tests. However, this is at the discretion of the user and, as indicated in Item 6 above, Wood does not mandate the use of multiple tests or a suggestion of how to use multiple tests. The examiner is also correct in saying that Wood system can be used for corporate development in paragraph [0313]. However, Wood does not use attributes and competencies, nor does Wood mandate or suggest a plurality of questions and tests and cross referencing. One of ordinary skill in this art would not consider Wood’s system to contain these elements. The examiner presumes that Wood and Bonnstetter are “solving the same basic problem” in Wood (paragraphs [0347] to [0350]) and Bonnstetter. This would be inconsistent with the way one of ordinary skill would interpret and use these

systems. Bonnstetter is assessing a job, Wood is assessing a person. Bonnstetter's system would initially be used to establish which competencies are important for a job. This information would then form the basis for building several different systems and processes (for hiring, evaluating performance, promotion, compensation, etc.), one of which could be a system and process for assessing people for the specified job.

10. Section 20. The Evans analysis involves algorithms to translate test items and test dimensions into attribute scores, and additional algorithms to translate attribute scores into competency scores. The examiner equates these algorithms with the weighting described in Wood. This conclusion is inconsistent with how one of ordinary skill in the art would interpret these terms. Wood combines personality dimensions together into a "node" (page 8, paragraph [0188]). A "node" is not an attribute or a competency. A node is an element of the personality test; it is the essential output of the personality test. Wood in no way links these nodes to attributes or competencies. Once a user has been "classified" (based on his nodes), content is presented to the user (see page 11, paragraph [0285]). Wood's nodes are also flexible; they may include a few or many traits. One of ordinary skill in the art would not consider as "matching" what is described in Woods (page 8, paragraph [0192]). One of ordinary skill in the art would refer to this as "scoring"...scoring the personality test or determining the profile. This "matching" and "weighting" referred to in Wood relates to how the test is scored (e.g. ENTJ on the MBTI), not how a test relates to an attribute or a competency.

11. Section 21. One of ordinary skill in the art would not refer to the items listed by the examiner from Wood ("Emotional Intelligence" and "questions about finance") as competencies. Please see Item 9 above for a discussion of what competencies are and how they differ from tests. "Emotional Intelligence" is defined as "the ability to monitor one's own and others feelings and emotions, to discriminate among them, and to use this information to guide one's thinking and action" (Mayer and Salovey, 1997, p. 443, Exhibit F). They are defined as "abilities" and are measured by an ability test. Again, referring to the discussion in Item 9 above, tests are "signs", something predictive of performance or competence (Wernimont & Campbell's typology). They are not the same thing as a competency. In fact, one of the tests used in the Evans process is an Emotional Intelligence test. Results are used to provide evidence about several of the competencies in the Evans process. For similar reasons, one of ordinary skill in the art would not consider "questions about finance" to be competencies (see Items 5 and 8 above for differences between questions and competencies). Asking questions about financial matters may provide evidence relating to the relative presence or absence of certain competencies, however, one of ordinary skill in the art would not refer to these questions as

“competencies”. Wood’s system does not use competencies. His system uses tests results by themselves. While Wood indicates his system can be used to find people with competencies and he says that competency models CAN be used (page 14, paragraph [0337]), the Wood system as described does not use them, nor is Wood specific about how they would be used.

12. Section 22. See above discussion related to claims 1-3 (Items 4-11)

13. Section 23. See above discussion related to claims 1-3 (Items 4-11)

14. Section 24. The examiner references page 4, paragraph [0067] from Wood. This shows Wood’s computer network for taking tests. One of ordinary skill in the art would see Wood’s network and Evans’ network as similar.

15. Section 25. As reviewed in Item 8 above, the Bonnstetter system focuses on the job, not the person. One of ordinary skill in the art would not associate an “action plan” which focuses on the development of the individual as being a part of a system described in Bonnstetter. Bonnstetter uses tools that could be used to create an individual action plan, but there is no rationale given in Bonnstetter to use them that way. Further, the advice discussed in Wood, that can represent the output of Wood’s assessment (see page 6, paragraph [0153]), is career advice. By this Wood means advice related to what jobs might be appropriate. One of ordinary skill in the art would not consider this to be development advice or actions one might engage in to improve in a competency area

16. Section 26. As discussed above with respect to Item 15 above (page 6, paragraph [0153]), the advice discussed in Wood that can come from this assessment is career advice related to what jobs might be appropriate. This is not the same as or equivalent to development advice and actions one might engage in to improve in a competency area. Moreover, advice on how to “get along with co-workers” is not the same as an action plan. An action plan may include activities to improve a person’s ability to work as a team member, but this activity is not in and of itself an action plan. An action plan has several activities, a sequence, a schedule, and a list of others to involve. Finally, under Wood, the advice itself is triggered by a direct request from a user, not by the results from a comprehensive assessment. Choosing an area in which to purchase advice is not the same as having an action plan. Moreover, having a system that has, as one option, to provide advice is not the same as having a system that does an assessment that provides action plans based on test results. In Bonnstetter, having a “behavioral blueprint” (Fig. 9D) refers to the job, not to the person. The focus of this blueprint is on what behaviors are required for success in this job. One of ordinary skill in the art would not equate this with an action plan. An action plan is focused on activities an individual would engage in to strengthen a competency. Bonnstetter’s blueprint shows what competencies are important to a job. Knowing

what behaviors are required implies nothing about the strengths or weaknesses of the incumbents who may perform those jobs or the actions that may be undertaken to improve in these areas.

17. Section 27. I agree with the examiner that Wood and Bonstetter are not focused on the same things as the Evans system.

18. Section 28. With respect to Taub, col. 21, lines 25-36, I agree with the examiner's position that Taub discloses the basic elements of an action plan as described in the Evans application. However, Taub is focused on improving broad behavioral capabilities relevant to all aspects of life. These "behavioral capabilities" are much broader than competencies, focused on all aspects and domains of a person's life. Competencies are focused on areas relevant to work and a specific job or position. Further, a list of interventions is not an action plan. An action plan has a schedule associated with the interventions with specific dates. In Taub, intervention planning is optional. It is not part of the integrated system like in Evans. One of ordinary skill in the art would see the action planning step as a required step. Unless specific actions are identified, improvement is not likely to happen.

19. Section 29. The examiner alleges that it would have been obvious to one of ordinary skill in the art to incorporate action planning into Wood or Bonstetter on the basis of Taub. One of ordinary skill in the art would see action planning as inconsistent with Bonstetter (see Item 15 above). Bonstetter's system is not focused on the person—it is focused on the job. Jobs do not have action plans, people have action plans. One of ordinary skill in the art would not see action planning under Wood as obvious because Wood is not focused on gaps or deficiencies in attributes or competencies. Wood classifies people and then gives them products and services that pertain to their "type". The Wood system does not need gaps or deficiencies to recommend products and services. One of ordinary skill in the art associates action plans with gaps or deficiencies.

20. Section 30. See above discussion related to claims 4 (Item 16).

21. Section 31. See above discussion related to claims 1 and 4 (Item 4-9 and Item 16).

22. Section 32. See above discussion related to claims 2 and 3 (Item 10 and 11).

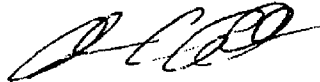
23. Section 33. Wood talks about personality characteristics, and Wood does not talk about competencies. One of ordinary skill in the art would not consider these to be the same thing or equivalents. Personality is a "dynamic organisation, inside the person, of psychophysical systems that create a person's characteristic patterns of behaviour, thoughts, and feelings." (Carver & Scheier, 2000, p.5, Exhibit G). A person's personality DRIVES patterns of behavior. Personality characteristics are NOT the behaviors themselves. Competencies (defined in Item 9 above) are not the same as personality characteristics. Again referring to the

Wernimont & Campbell (1968) typology, personality characteristics would be considered “signs”; competencies would be considered “criteria” (performance measures expressed in behavioral terms). Further, one of ordinary skill in the art would not equate attributes (under Evans) with “personality types (under Wood). Personality characteristics under Wood are measured with the Keirsey Temperament sorter or MBTI, and their specific scores or patterns of scores on the characteristics cause the user to be labeled with a certain type (e.g. ESTJ on the MBTI). Personal characteristics and personality types are all part of the personality testing system. Attributes (under Evans) describe the separate elements of a competency, broken down into more detail. Under Evans, personality test results provide evidence regarding the relative presence or absence of attributes. These attributes are independent of the testing system and are a part of the competency definition system. With the Keirsey Temperament Sorter, instead of using letter codes as labels, they use descriptive word labels. These labels are again part of the personality testing system. Moreover, they don’t correspond to actual actions. They are linked to actions in the theoretical sense, that people with a given Keirsey profile WOULD be expected to do these things. These are definitional, not based on any observed evidence. While the Keirsey Temperament Sorter roles could be linked to competencies, this is not a part of the system under Wood.

24. Section 34. One of ordinary skill in the art would not call what Wood refers to in paragraph [0153] as multiple competencies. “Working outside”, “attention to detail”, etc. would not be considered competencies by one of ordinary skill in the art. In this circumstance, one of ordinary skill in the art would refer to these as “interests” (see Item 9). Again, in the Wernimont and Campbell (1968) typology, these questions would be considered signs; competencies would be considered criteria. I agree with the examiner that Woods implies using multiple tests in paragraphs [0108] and [0125]. However, many of the specific things Woods discusses on pages 4 and 5 would not be considered “tests” by one of ordinary skill in the art (e.g. family history, religious beliefs) (see Item 4 above). One of ordinary skill in the art would not equate personality temperament variants ([0032] of Wood) with attributes (under Evans) (see Item 23 above). In addition, one of ordinary skill in the art would not call a temperament a competency (see Item 22 above). Moreover, the fact that MBTI has bipolar scales does not mean it measures 2 attributes. It simply means the developers of the MBTI chose to define what their personality characteristics mean by using different definitions at different ends of the scale, vs. simply defining the characteristics and then allowing someone to be high or low on it. Finally, the fact that there are 4 dimensions to the MBTI does not mean there are 4 competencies, per the discussion in Item 22 above.

25. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under §1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

And further, I sayeth not.



Date: 3-3-08

Alan L. Colquitt

References

Exhibit A--Resume of Alan L. Colquitt

Exhibit B--

Guion, Robert M. (1998). *Assessment, measurement, and Prediction for Personnel Decisions*. Lawrence Erlbaum Associates, New Jersey. pp. 57-59; 485-540; 591-592; 604-624.

Exhibit C--

Wikipedia (2008) http://en.wikipedia.org/wiki/Industrial_and_organizational_psychology

Exhibit D--

Spencer L.M., McClelland D.C., Spencer S. (1994). *Competency assessment methods: History and state of the art*. Reported in Ash RA, Battista M, Carr L, Eyed LD, Hesketh B, Kehoe J, Pearlman K, Prien ER (2000). The practice of competency modeling. *Personnel Psychology*, 53, pp. 703-740.

Exhibit E--

Wernimont P.F. & Campbell J.P. (1968). "Signs, Samples, and Criteria". In Dreher GF & Sackett PR (1983). *Perspectives on Employee Staffing and Selection*. Homewood, IL: Richard D. Irwin, Inc. pp. 197-203.

Exhibit F--

Mayer, J.D. & Salovey, P. (1993). The intelligence of emotional intelligence. *Intelligence*, 17, 433-443.

Exhibit G--

Carver, C. S., & Scheier, M. F. (2000). *Perspectives on personality* (4th ed.) As reported on web page: <http://wilderdom.com/personality/L5-1WhatIsPersonality.html>

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| Customer No. | : | 27268 | | |

SECOND DECLARATION OF ALAN L. COLQUITT

I, Alan L. Colquitt, Ph.D. of 7805 Timber Run Lane, Indianapolis, IN 46256 declare as follows:

1. I have over 20 years of experience implementing testing programs as an internal consultant in The Procter & Gamble Company (1985-1990) and Eli Lilly and Company (1990-present). I have a Ph.D. in Industrial and Organizational Psychology from Wayne State University in Detroit, MI. I have specialized training in the areas of test development, test validation, and psychometrics. I have considerable experience developing tests and testing programs for a variety of purposes including: Pre-employment screening; employee and leadership development; identification, selection and development of leaders and high potential employees; promotion; and reallocation. See attached resume for additional background (Exhibit A).
2. I have studied the disclosure of the above-identified patent application ("Evans") and the disclosures of U.S. Patent Publication No. 2002/0045154Q1 to Wood (The "Wood" application) and U.S. Patent Nos 7,148,969 and 6,341,267 to Bonstetter and Taub (the "Bonstetter Patent" and "Taub Patent" respectively).
3. I have studied the Office Action issued by the patent examiner on April 18, 2007 in application serial number 10/823,829; and have the following comments on the assertions in the Office Action in paragraph number 36 from the Office Action:
4. The examiner asserts that Wood provides multiple tests. Regarding this assertion, there are many different classes of tests and types of tests within classes. They are not interchangeable. Under Wood's system, any test will do (e.g. Wood, p5 [0110]). The choice of tests needs to be specific to the purpose for which they are being used and not all tests relevant

for a given purpose are created with the same rigor and level of professional quality as standardized measures of psychological constructs. The claimed invention relates to personality attributes because personality may be modified and improved, whereas Wood relates to temperament attributes that are characteristics of individuals that are recognized by one of skill in this field as being innate, relatively unchangeable aspects of the individual. Wood refers frequently to 2 tests used in his system: The Keirsey Temperament Sorter and the Myers-Briggs Type Indicator. Neither of these tests is well-suited to providing feedback and development advice for rating competencies or creating transformational activities. First, these 2 instruments measure temperament, not personality. Temperament is felt to be permanent, not changeable (see Strelau, 1987, as cited in Hofstee, 1991, p182). They talk about type as like "handedness"; one is born with it. It makes little sense to use instruments that measure things that cannot be changed in a context where a method is employed to enable individuals to grow and develop competencies—to change. The tests recited in the claims measure Personality, which is felt to be more environmentally controlled and therefore can be developed. Second, the Wood "tests" were not developed to be used for human capital management. The Wood "tests" are not useful in a context where results need to be linked to competencies, where feedback is provided on how strong/weak someone is related to personality attributes or competencies. The language used in the Wood "tests" is not immediately relevant to assessing competencies. Respondents are classified as "ENTJ"—one of the MBTI types, or "Guardians", "Artisans"—output from the Keirsey). It is not clear what these mean and how they fit in the context of assessing competencies without additional invention to help bridge this gap. The tests recited in the present claims were developed for assessing personality attributes and do not suffer from this issue. Third, the Wood "tests" identify a respondent's *type*. *Types* are not "good" or "bad". They do not indicate the strength of ability or personality or degree of aptitude. Because of this it is difficult to link test results to the strength or weakness of competencies. The standardized measures of the capability tests in the claims and disclosed in the specification have traditional scaling (scale scores produced with high and low scores relative to an external norm group) which lends itself much more to being linked to competencies. Finally, there are also technical problems with the way one of the Wood "tests" is scored and with its reliability and validity. These issues the "test" less useful psychometrically (see Hunsley, Lee, & Wood, 2004 for a discussion of issues with the Myers-Briggs Type Indicator).

5. The examiner asserts that "answering questions about finance is the same as taking a finance test and that discussions of "test development" are not relevant to this discussion. Regarding this first assertion, answering questions is not taking a test. Finding out

what someone knows about finance does not mean someone is taking a finance test. A finance test could involve someone verbally asking questions. However, a number of other criteria would need to be satisfied for this to be considered a test. As stated in Guion, 1998, p. 485:

"A test is an objective and standardized procedure for measuring a psychological construct using a sample of behavior. A test is objective in that responses can be evaluated against external standards of truth or of quality, correct or incorrect, or better or poorer than a standard. Measurement implies quantification. Tests are scored quantitatively, with measurable precision, on numerical scales representing levels of a construct to be inferred from the scores. Tests use a standardized procedure with the same stimulus component for all test takers. Standardization refers primarily to controlling the conditions and procedures of test administration."

One of ordinary skill in the art would not consider to be a test what Wood refers to as "asking questions about finance". This does not meet the above conditions and standards. Regarding Wood's use of the word "test" in the abstract, Wood is free to refer to the tools used in his system by any term he chooses. One of ordinary skill in the art would use more precision than is used by Wood in distinguishing the different types of assessment procedures. For some of the "tests" he describes, those skilled in the art would properly refer to them as tests or inventories, and they would meet the conditions describe in Guion, 1998. The process he describes with respect to "asking questions about finance" would not qualify using the standards described in Guion, 1998. Those skilled in the art would not refer to this as a test.

6. The examiner asserts that the techniques described in Wood are similar to those in the claimed invention and that the techniques provided in Bonstetter would have been obvious additions to the system described by Wood. Regarding this assertion, Bonstetter is solving a different problem than the claimed invention. The problem Bonstetter identifies is the high failure-rate in the ability to identify job candidates who will be successful on the job (Column 1, Paragraph 2, lines 25-35). His solution to this problem is to improve the way competencies are IDENTIFIED (not measured) (see column 3, prior to Section III.) His solution is not to measure people on competencies. The problem the claimed invention addresses is how to measure people on competencies using commercially available and professionally developed and validated tests, combining the information together to help individuals improve. Bonstetter comments that the reasons selection interviews are not effective is that interviewers don't focus on the right things. His process IDENTIFIES those "right things"-- the job-related requirements for a job. Those skilled in the art refer to this process as "Job Analysis". (See Harvey, 1991, p. 74). The output

of a job analysis serves as input to a whole host of processes, one of which might be the development of selection procedures such as the selection interview as described in Bonstetter (see Harvey, 1991, pp. 124-146 for the varied uses of job analysis information). Bonstetter is focused on the job and its requirements. The claimed invention tests the individual and links those measurements to competencies to help the individuals develop these competencies. The examiner asserts that the constructive feedback provided by Bonstetter is the same as the feedback provided by the claimed invention. Regarding this assertion, there are several issues with what Bonstetter describes and there are several ways it differs from the claimed invention. As an example, Bonstetter shows a Personal Competency Inventory (PCI) in Figure 12A. He reports that participants and others complete this form, rating competencies directly. The output is a set of strengths (see Fig. 14b). First, it is not clear where Bonstetter's system ends and where other secondary uses of his system begin. The examiner refers to one of the possible uses of Bonstetter's system and the information the system produces. The examiner's statement "match people to appropriate jobs" refers to using the information for selection interviewing. The examiner's statement "improve people's performance on the job by giving them feedback on their strengths and weaknesses which pertain to job performance" refers to using the information to develop a performance appraisal system or a training and development/feedback and coaching system. The Bonstetter system focuses on the position. He says in Col 5, 35-40 (referring to Figure 12a) this is something that CAN be used with the invention, and in Col 5, 44 that Figures 14A and 14b are HYPOTHETICAL examples of reports. Points 9, 13, 15, and 16-35 under Columns 3 and 4 all refer to other uses for the information his system produces. His system does not include the procedures to accomplish these "other uses." He says his system "allows for" other things to be done (e.g. "This allows a set of interview questions to be produced"), but these things are not part of his system. The primary purpose for which he uses the information from his system is to "evaluate applicants for the position to determine if their characteristics will make them high performers in the position" (Col 4, paragraph 30). In contrast to Bonstetter's job analysis, the claimed invention measures individuals on competencies and gives them feedback and ideas for development. Second, Bonstetter presents a tool in Figure 12a which could be used to measure competencies. This is something he himself laments may be difficult to do based on what is currently known about competencies:

"The many attempts....beg the question—how does one define 'competencies' and which ones are relevant? There is no agreement on these questions." (Col 2, lines 43-45). Additionally he reports "As previously discussed, much has been written about 'competencies'. However, no agreement exists as to what is a competency (Col 8, lines 48-51).

Those of ordinary skill in the art would agree it is difficult to measure competencies directly given their breadth. There are several issues with the tool shown in Figure 12a as it is shown. The tool does not appear to be a published tool, nor does it appear to be professionally developed and validated to provide a standardized measure. It purportedly measures competencies; however, it contains questions similar to those typically included in personality tests. As described in Spencer, McClelland and Spencer (1994) (cited in my original affidavit), personality is only one component of competencies. He provides no evidence this tool measures specific personality traits, nor does he list these traits or how these traits are linked to specific competencies. Moreover, there are far too few items in the test to reliably measure standard personality traits or to reliably measure the number of competencies listed. Third, while Bonstetter says his system provides feedback on competencies (assuming Figures 14a and 14b are part of his system), the form of this feedback is simply a rank ordering of competencies from highest to lowest. Candidates are not provided any detail about what specific attributes might be contributing to their strengths and weaknesses, nor do they have any information on how they might improve in these areas. The claimed invention provides a comprehensive individual capability evaluation that rates competencies, as well as providing information on how to improve in these areas. Finally, In Col 14, section F, Bonstetter discusses alternative features and options that might be obvious to one skilled in the art. These alternatives are no more obvious to those skilled in the art than are the many uses to which any job analysis information can be put (as articulated in Harvey, 1991, p125-146). Anyone of ordinary skill in the art who is familiar with job analysis knows the variety of ways the information it produces can be used. However, he/she may not possess the knowledge, skills, and experience to know how to develop or improve any of these systems. Specific innovations in the areas of assessment and training and development or the development of a compensation system would not be obvious to those conducting a job analysis. For example, the fact that someone conducts a job analysis of a sales position does not mean it would be obvious to that person how to develop or improve a sales incentive compensation system (which would use the job analysis information as input).

7. The examiner asserts that Wood measures competencies and that personality traits *are* competencies. Regarding this assertion, first, the psychological or temperament constructs measured in the tests used by Wood are not competencies. Introversion/Extraversion is not a competency (see Spencer, McClelland, and Spencer, 1994 in the original affidavit for a definition of competency). Measuring someone's type (e.g. ESTJ or Artisan) is not assessing a competency. In fact, Wood himself distinguishes instruments that measure competencies from instruments that measure other psychological constructs (see p.5, [0109] to [0125]. The

definitions cited in Ash et al, 2000 from my prior affidavit suggest that a competency is not a unitary concept. Competencies can be, in part, defined by personality traits, but would also be defined by other constructs such as skills and abilities (See Spencer, McClelland, and Spencer (1994) in original affidavit). They are not substitutable for one another. Evidence about extraversion-introversion (a personality trait) may be used to assess whether or not someone has strong interpersonal competence....however, this does not mean introversion-extraversion is a competency. Second, the psychological constructs measured by the tests used in Wood are not personality attributes linked to competencies.

8. The examiner asserts that the systems of Wood and Bonstetter can be used to solve the same problems. Regarding this assertion, the problem Wood is addressing is how to segment people based on psychological instruments to better deliver products and services to customers. The information he uses to segment people are psychological tests. Wood outlines countless different services that could be provided, one of which is to help match people to jobs. However, these services are not an essential part of Wood's invention. Wood's system focused on the psychological tests and the segmentation. The problem Bonstetter is addressing is how to obtain better information about what jobs require so he can better identify candidates who can be successful at these jobs. His primary focus is on profiling jobs and he acknowledges this information can be used in many different ways. Wood is focused on people and how to segment them; Bonstetter is focused on jobs and how to profile them. One of ordinary skill in the art would consider these to be two very different issues, neither of which is particularly useful for evaluating a plurality of competencies using a plurality of tests assessing attributes. As is detailed in (Guion, 1998, p. 57) the first step in the development of HR systems and processes is to understand the job (job analysis). This is where Bonstetter focuses. The second step is to translate the job requirements into people requirements. This is where Wood focuses. Neither Wood nor Bonstetter speak of rating a plurality of competencies or developing transformational activities.

And further, I sayeth not.



Alan L. Colquitt

Date: July 17, 2008

References

Exhibit A-- Resume of Alan L. Colquitt

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

| | | | |
|--------------|---|--------------------|-----------------------|
| Appl. No. | : | 10/823,829 | Confirmation No. 5642 |
| Applicant | : | Evans et al. | |
| Filed | : | September 28, 2009 | |
| Art Unit | : | 3714 | |
| Examiner | : | Aileen Chyn | |
| Docket No. | : | CHORUS-P007-01 | |
| Customer No. | : | 27268 | |

THIRD DECLARATION OF ALAN L. COLQUITT

I, Alan L. Colquitt, Ph.D. of 7805 Timber Run Lane, Indianapolis, IN 46256 declare as follows:

1. I have over 20 years of experience implementing testing programs as an internal consultant in The Procter & Gamble Company (1985-1990) and Eli Lilly and Company (1990-present). I have a Ph.D. in Industrial and Organizational Psychology from Wayne State University in Detroit, MI. I have specialized training in the areas of test development, test validation, and psychometrics. I have considerable experience developing tests and testing programs for a variety of purposes including: Pre-employment screening; employee and leadership development; identification, selection and development of leaders and high potential employees; promotion; and reallocation. See attached resume for additional background (Exhibit A).

2. I have studied the disclosure of the above-identified patent application ("Evans") and the disclosures of U.S. Patent Publication No. 2002/0045154Q1 to Wood (The "Wood" application) and U.S. Patent Nos 7,148,969 and 6,341,267 to Bonstetter and Taub (the "Bonstetter Patent" and "Taub Patent" respectively).

3. I have studied the Office Action issued by the patent examiner on May 28, 2009 in application serial number 10/823,829; and have the following comments on the assertions in the Office Action.

4. With respect to claim 1, the examiner asserts that Wood's system "can also be used to find people with particular skills or competencies" (Wood, p.14, paragraph [337]). However, Wood is completely silent on how such a use would be implemented. Wood suggests that "additional personality tests or skills test, or competency models/tests can also be used" (Wood, p.14 paragraph [337]). However, Wood does not teach or enable one of skill in the art to employ such a system to obtain competency measures or ratings.

5. With respect to claim 1, one of skill in the art would say that Wood does not teach providing individual capability tests that are used to rate a plurality of competencies. Wood suggests that a competency model/test can also be used instead of the Keirsey Temperament Sorter (Wood, p.14 paragraph [337]). There is no disclosure in Wood of a capability test that outputs competency information. Woods system only gets competency information out by including a specific competency test as an input. Wood's system assesses competencies only by substituting a competency test/model for the Keirsey Temperament Sorter. Using a single competency test to measure competencies is different than using a plurality of individual capability tests to measure a plurality of competencies. Wood makes a non-enabled statement that input of a competency test can output competency information. The claimed method is more transformative, pulling competency information from many individual capability tests.

6 With respect to claim 1, Wood fails to discuss rating a plurality of competencies. Wood states that it is possible to use his system to "find people with particular skills and competencies" (Wood, p.14 paragraph [337]), but Wood fails to teach or discuss how competencies would be measured, assessed, and rated as a part of his process. Identifying people with competencies and rating competencies are different operations

7 With respect to claim 1, Wood fails to discuss providing a comprehensive report or output of any kind. Paragraph 364 of Wood discusses an administrator viewing the results via "a series of reports". One of skill in the art would interpret this to mean the administrator is reviewing the standard reports that are available for each of the tests included in Wood's system. In this case, the administrator is left to consider these multiple reports in a subjective and undisclosed way in designing advice for the group. Wood fails to teach that a comprehensive report is generated. Furthermore, Wood discloses providing employment matching reports and educational literature. This is not a comprehensive report that rates a plurality of competencies. The presently disclosed system creates a comprehensive and integrated report, with competency ratings derived from the results of the individual capability tests.

8 With respect to claim 2, Bonstetter fails to teach cross-referencing to multiple tests. Furthermore, the cited figures of 7E, 8E, 9E, and 10E are not tests. They are surveys asking people what qualities are important for a certain job. They don't measure the qualities themselves.

And further, I sayeth not.



Alan L. Colquitt

Date:

9/25/09